IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 288 of 2006.

M/s.M.P.Vashi and Associates. ... Petitioner.

V/s.

1. Kamlakar B. Phatkare

2. State of Maharashtra. ... Respondents.

J.P.Cama, senior counsel i/b. Santosh Shetty for the petitioner.

V.Krishna i/b. Juris Consilitis for respondent No.1.

M.H.Solkar, A.G.P. for respondent No.2.

CORAM : V.C.DAGA, J.

DATED : 5th April 2006.

P.C. :

Rule, returnable forthwith by consent of parties.

Heard learned counsel for the rival parties.

Perused petition.

2. This petition is directed against the order dated 16th November, 2005 passed below Exh.C-7 in

Reference (IDA) No. 110 of 2004 by the Tenth Labour Court, Mumbai, who refused to treat the issue of jurisdiction as preliminary issue.

Rival Submissions :

3. Mr.Cama, learned senior counsel appearing for the petitioner submits that the issue of jurisdiction goes to the root of the matter since the petitioner has denied employer-employee relationship between the parties. He placed reliance on the order of the Apex Court passed in Petition for Special Leave to Appeal (Civil) No.3936/2006 arising from the judgment and order dated 27th January, 2006 passed by this Court in Writ Petition No.1563/2005 in the case of ***Philips India Ltd.*** **v.** ***P.N.Thorat & Ors.***; wherein the Apex Court relying upon judgment of three judge Bench in the case of ***Management of express Newspaper (Pvt.) Ltd.*** **v.** ***The workers and Ors.***, AIR 1963 SC 569 ruled that the questionof jurisdiction can be raised before the Tribunal itself as a preliminary issue.

4. Per contra, learned counsel appearing for respondent No.1- workman tried to support the impugned order. He submits that it was not necessary for the Labour Court to frame and try an issue of jurisdiction as a preliminary issue since it involves mixed questions of law and fact. He further submits that this attempt on the part of

the petitioner to raise preliminary objection and to seek ruling thereon is nothing but an attept to protract litigation. He, thus, submits that the objection and present petition both are not bona fide as such petition is liable to be dismissed.

Consideration :

5. Having heard rival parties, in my opinion, it is not always obligatory on the Court to decide the issue of jurisdiction as a preliminary issue. Considering the provisions, after amendment to the Code of Civil Procedure, 1908; (C.P.C.), I may mention that since the year 1976, there is no obligation cast upon the Court to decide the issue relating to the jurisdiction as a preliminry issue. Subject to the provisions of sub-rule (2), the Court has to pronounce judgment on all issues. In other words, the obligation to decide a question of law as a preliminary issue if that decision disposes of the case or part of the case is no longer there. Similarly, the discretion to decide any other issue as a preliminary issue has been totally taken away from the Court. On the other hand, the duty is cast upon the Court that it must proceed to hear all the issues and pronounce judgment on the same.

6. There is, however, a small exception carved out to the above provision. The Court may try an issue of jurisdiction of the Court or to the legal bar to the suit as a preliminary issue but this is

more in the nature of a discretion rather than a duty and the Court is not bound to try any issue despite the provision contained in order XIV rule 2 (2) of C.P.C. The words “it may try” are clearly indicative of the fact that discretion is given to the Court and no duty is cast upon the Court to decide any issue as a preliminary issue.

7. Borrowing support from the analogy of order 14 rule 2(2) of C.P.C., and keeping in mind the order of the Apex Court in the case of ***Philips India Ltd.*** (cited supra), and looking to the consensus between the parties, I feel that the interest of justice would be met by directing the Labour Court to frame all relevant issues and call upon the parties to lead evidence on all such issues. The Labour Court, after recording and taking oral and documentary evidence on record on all issues, may, in its discretion, first decide the preliminary issue relating to jurisdiction of the Court. If the finding on the issue is found to be in favour of the petitioner, in that event, the Labour Court may in its discretion record its findings on all remaining issues so as to avoid remand of the proceedings. However, if the finding happens to be against the petitioner on preliminary issue, then, after recording finding on the preliminary issue the Labour Court may grant fifteen days time to the petitioner to asail adverse finding on the preliminary issue. However, after expiry of fifteen days period, Labour Court may proceed to record its findings on all remaining

issues, subject to the orders of the higher Court, if any, and dispose of the reference. However, considering the nature of dispute, it must be disposed of within one year from the date of receipt of copy of this order. All rival contentions are kept open.

8. With this workable order, impugned order passed by the Labour Court stands modified. Accordingly, rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)